

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

JOSEPH SHEROD CANNON,

Plaintiff,

-against-

CITY OF NEW YORK, CO TORRES, CO CROCKER
9303, CO ALADIN 7920, CO SMITH 9108, CO
YAKUBU 8152, CO JACKSON 17789,

Defendants.

**ANSWER TO THE
AMENDED COMPLAINT ON
BEHALF OF DEFENDANTS
CITY OF NEW YORK,
TORRES, CROCKER,
ALADIN, SMITH AND
JACKSON**

Case No. 1:15-cv-5753 (RWS)

----- X

CITY OF NEW YORK (the “City”), CORRECTION OFFICER TORRES (“Torres”), CORRECTION OFFICER CROCKER 9303 (“Crocker”), CORRECTION OFFICER ALADIN 7920 (“Aladin”), CORRECTION OFFICER SMITH 9108 (“Smith”), and CORRECTION OFFICER JACKSON 17789 (“Jackson”) (collectively, “Defendants”), by their attorney, ZACHARY W. CARTER, Corporation Counsel of the City of New York, as and for their answer to the Complaint, respectfully allege as follows:

1. Deny the allegations set forth in Paragraph “I” of the Prisoner Form Amended Complaint, entitled “Parties in this Complaint,” and all of its subparts, except admit that Plaintiff purports to name the parties to this action as stated therein, and that on the dates of the alleged incident, defendants Torres, Crocker, Aladin, Smith and Jackson were employees of the New York City Department of Correction (“DOC”) and assigned to the Anna M. Kross Center.

2. Deny the allegations set forth in Paragraph “II” of the Prisoner Form Amended Complaint, entitled “Statement of Claim,” and all of its subparts.

3. Deny the allegations set forth in Paragraph “III” of the Prisoner Form Amended Complaint, entitled “Injuries.”

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “IV” of the Prisoner Form Amended Complaint, entitled “Exhaustion of Administrative Remedies,” and all of its subparts.

5. Deny the allegations set forth in Paragraph “V” of the Prisoner Form Amended Complaint, entitled “Relief,” to the extent it sets forth averments of fact; insofar as this paragraph contains only a prayer for relief, no response is required.

6. Deny the allegations set forth in Paragraph “VI” of the Prisoner Form Amended Complaint, entitled “Previous Lawsuits,” and all of its subparts.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

7. The Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

8. Any injury alleged to have been sustained resulted from Plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

9. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision

thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

10. Defendants Torres, Crocker, Aladin, Smith and Jackson have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and therefore are entitled to qualified immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

11. At all times relevant to the acts alleged in the Complaint, defendants Torres, Crocker, Aladin, Smith and Jackson acted reasonably and properly in the lawful exercise of their discretion and/or judgmental functions/decisions. Therefore, defendants Torres, Crocker, Aladin, Smith and Jackson are entitled to governmental immunity from liability on Plaintiff's state law claims.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

12. The Amended Complaint contains no specific allegations regarding defendant Smith.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

13. Punitive damages are not recoverable against the City of New York. Punitive damages cannot be received against any other defendants, and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

14. Municipal liability is precluded for Plaintiff's claims pursuant to 42 U.S.C. § 1983 because Plaintiff has failed to state that his alleged injuries were the direct result of any official City custom, policy or practice.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

15. Plaintiff may have failed to mitigate damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

16. Plaintiff provoked the incident or incidents that Plaintiff claims results in his alleged injuries.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

17. To the extent that one or more defendants used any force, it was reasonable, justified, and necessary to accomplish defendants' official duties and to protect their own physical safety and the safety of others.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

18. Plaintiff's action may be barred, in whole or in part, by the doctrines of *res judicata* and *collateral estoppel*.

WHEREFORE, Defendants request judgment dismissing the Amended Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 8, 2016

ZACHARY W. CARTER
Corporation Counsel of the City of New York
*Attorney for Defendants City, Torres, Crocker,
Aladin, Smith and Jackson*
100 Church Street
New York, New York 10007
(212) 356-2533

By:

/s/
Jenna Krueger (JK4321)
Assistant Corporation Counsel

cc: **VIA FIRST CLASS MAIL**
Joseph Sherod Cannon, #349-150-3252
Plaintiff Pro Se
Manhattan Detention Complex
125 White Street
New York, NY 10013

VIA ECF
Koehler and Isaacs, LLP
Attorney for Defendant Yakubu
Julie A. Ortiz, Esq.
61 Broadway, 25th Floor
New York, NY 10006

15 Civ. 5753 (RWS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH SHEROD CANNON,

Plaintiff,

-against-

CITY OF NEW YORK, CO TORRES, CO
CROCKER 9303, CO ALADIN 7920, CO SMITH
9108, CO YAKUBU 8152, CO JACKSON 17789,

Defendants

**ANSWER TO THE AMENDED COMPLAINT ON
BEHALF OF DEFENDANTS CITY, TORRES,
CROCKER, ALADIN, SMITH AND JACKSON**

ZACHARY W. CARTER

Corporation Counsel of the City of New York

100 Church Street

New York, New York 10007

Of Counsel: Jenna Krueger

Tel: (212) 356-2533

Due and timely service is hereby admitted.

New York, N.Y., 2016

..... Esq.

Attorney for